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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11
12 Plaintiff,
13
14 v.
15 JOE MORRIS THOMPSON,
16 Defendant.

CASE NO. 2:20-CR-222-KJM

STIPULATION REGARDING USE OF
VIDEOCONFERENCING DURING REVOCATION
HEARING; FINDINGS AND ORDER

DATE: 12/14/2020

TIME: 9:00 a.m.

COURT: Hon. Kimberly J. Mueller

16 **BACKGROUND**

17 This matter is before the Court for an admit/deny hearing on a supervised release violation. This
18 stipulation is respectfully submitted in anticipation of an admission to all or part of the pending petition
19 for revocation of supervised release.

20 On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act
21 (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief
22 District Judges to authorize plea and sentencing hearings by video or telephonic conference when 1)
23 such hearings “cannot be conducted in person without seriously jeopardizing public health and safety;”
24 and 2) “the district judge in a particular case finds for specific reasons that the plea or sentencing in that
25 case cannot be further delayed without serious harm to the interests of justice.” *Id.*, Pub. L. 116-23
26 § 15002(b)(2).

27 On March 29, 2020, the Judicial Conference of the United States made the findings required by
28 the CARES Act, concluding that “emergency conditions due to the national emergency declared by the

1 President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the
2 Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the
3 functioning of the federal courts generally.”

4 On June 29, 2020, the Chief Judge of this District, per General Order 620, also made the findings
5 required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal Procedure
6 and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted
7 in person without seriously jeopardizing public health and safety.” Accordingly, the findings of the
8 Judicial Conference and General Order 620 establish that plea and sentencing hearings cannot take
9 safely take place in person.

10 In order to authorize plea or sentencing hearings by remote means, however, the CARES Act—
11 as implemented by General Order 620—also requires district courts in individual cases to “find, for
12 specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without
13 serious harm to the interests of justice.” General Order 620 further requires that the defendant consent
14 to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
15 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
16 teleconference.

17 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
18 General Order 620 have been satisfied in this case. They request that the Court enter an order making
19 the specific findings required by the CARES Act and General Order 620. Specifically, for the reasons
20 further set forth below, the parties agree that:

21 1) The revocation hearing in this case cannot be further delayed without serious harm to the
22 interest of justice, given the public health restrictions on physical contact and court closures existing in
23 the Eastern District of California; and

24 2) The defendant waives his physical presence at the hearing and consents to remote hearing
25 by videoconference and counsel joins in that waiver.

26 **STIPULATION**

27 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
28 through defendant’s counsel of record, hereby stipulate as follows:

1 1. The Governor of the State of California declared a Proclamation of a State of Emergency
2 to exist in California on March 4, 2020.

3 2. On March 13, 2020, the President of the United States issued a proclamation declaring a
4 National Emergency in response to the COVID-19 pandemic.

5 3. In their continuing guidance, the Centers for Disease Control and Prevention (CDC) and
6 other public health authorities have suggested the public avoid social gatherings in groups of more than
7 10 people and practice physical distancing (within about six feet) between individuals to potentially
8 slow the spread of COVID-19. The virus is thought to spread mainly from person-to-person contact,
9 and no vaccine currently exists.

10 4. These social distancing guidelines – which are essential to combatting the virus – are
11 generally not compatible with holding in-person court hearings.

12 5. On March 17, 2020, this Court issued General Order 611, noting the President and
13 Governor of California’s emergency declarations and CDC guidance, and indicating that public health
14 authorities within the Eastern District had taken measures to limit the size of gatherings and practice
15 social distancing. The Order suspended all jury trials in the Eastern District of California scheduled to
16 commence before May 1, 2020.

17 6. On March 18, 2020, General Order 612 issued. The Order closed each of the courthouses
18 in the Eastern District of California to the public. It further authorized assigned district court judges to
19 continue criminal matters after May 1, 2020 and excluded time under the Speedy Trial Act. General
20 Order 612 incorporated General Order 611’s findings regarding the health dangers posed by the
21 pandemic.

22 7. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial
23 emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District’s “critically low
24 resources across its heavy caseload.” The report accompanying the Judicial Council’s declaration
25 analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the
26 District’s caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in
27 weighted filings) and its shortage of judicial resources (the District is currently authorized only six
28 district judges; two of those positions are currently vacant and without nominations). The report further

1 explained that a backlog of cases exists that “can only start to be alleviated” when the CDC lifts its
2 guidance regarding gatherings of individuals.

3 8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1,
4 2020 and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

5 9. On May 13, 2020, General Order 618 issued, continuing court closures until further
6 notice and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

7 10. On June 29, 2020, this Court issued General Order 620, finding that felony pleas could
8 not be conducted in person without seriously jeopardizing public health and safety.

9 11. On September 30, 2020, this Court issued General Order 624, finding that felony pleas
10 still could not be conducted in person without seriously jeopardizing public health and safety.

11 12. Given these facts, it is essential that Judges in this District resolve as many matters as
12 possible via videoconference and teleconference during the COVID-19 pandemic. By holding these
13 hearings now, this District will be in a better position to work through the backlog of criminal and civil
14 matters once in-person hearings resume.

15 13. The revocation hearing in this case accordingly cannot be further delayed without serious
16 harm to the interests of justice. If the Court were to delay this hearing until it can be held in-person, it
17 would only add to the enormous backlog of criminal and civil matters facing this Court, and every Judge
18 in this District, when normal operations resume.

19 14. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-
20 teleconference. Counsel joins in this consent.

21 IT IS SO STIPULATED.

22
23 Dated: December 8, 2020

McGREGOR W. SCOTT
United States Attorney

24 /s/ ALEXIS NELSEN
25 ALEXIS NELSEN
Assistant United States Attorney

26 Dated: December 8, 2020

27 /s/ RACHELLE BARBOUR
RACHELLE BARBOUR
Counsel for Defendant
28 JOE MORRIS THOMPSON

FINDINGS AND ORDER

1. The Court adopts the findings above.

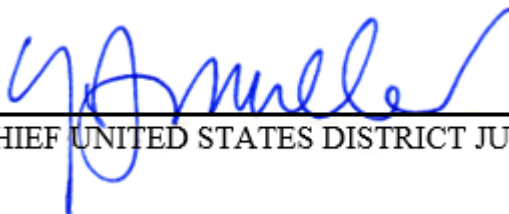
2. Further, the Court specifically finds that:

a) The revocation hearing in this case cannot be further delayed without serious harm to the interest of justice; and

b) The defendant has waived his physical presence at the hearing and consents to remote hearing by videoconference.

3. Therefore, based on the findings above, and under the Court's authority under § 15002(b) of the CARES Act and General Order 620, the hearing in this case will be conducted by videoconference.

IT IS SO FOUND AND ORDERED this 11th day of December, 2020.


CHIEF UNITED STATES DISTRICT JUDGE